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**IN THE UNITED STATES DISTRICT COURT**

**FOR THE DISTRICT OF UTAH**

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| SHARON MAGNUSSON.<br>Plaintiff.<br><br>Vs.<br><br>OCWEN FINANCIAL CORPORATION. and NATIONSTAR MORTGAGE, LLC. and CENLAR FSB. and JANE AND JOHN DOES 1-10.<br><br>Defendants. | **OBJECTION TO REPORT & RECOMMENDATION DATED 12/06/2016**<br><br>Trial Court No. 2:14cv00161 DN<br><br>Judge: Paul M. Warner |

Pursuant to Utah Federal Rules of Civil Procedure 72, pro se Plaintiff Sharon Mangusson hereby submits her Objection *to Report & Recommendation* ("R&R") filed by the court as document 129. Plaintiff hereby states:

**ARGUMENT**

Plaintiff objects to the conclusions rendered on page 8 and footnote 6 of the R&R denying Plaintiff's right to a trial by jury. To deny Plaintiff the right to a trial by jury under any legal theory supporting summary judgment is absurd and lawfully incorrect. Unless Plaintiff waives this right nobody has the right to waive it without her permission. Plaintiff has a constitutional right to a trial by jury which is inviolate. Summary judgment is a tool to circumvent Plaintiff's constitutional right to a trial by jury which is unconstitutional. Summary

judgment shifts the balance of powers from a jury to the court. Plaintiff has the right to have the jury decide the law and the facts of this case.

Under Article 1 Section 10 of the Utah State Constitution is states "A jury in civil cases shall be waived unless demanded". Plaintiff has demanded a trial by jury which now cannot be waived. She does not waive this right nor can a summary judgment waive this right for her. This is true with other states as well. "Under Article I. Section 5 of the Wisconsin Constitution. the right to a jury trial "shall remain inviolate. . . Historically. it has been interpreted to apply only to civil cases. Dane County v. McGrew. 2005 WI 130. ¶13. 285 Wis. 2d 519. 699 N.W.2d 890; Bennett v. State 57 Wis. 69. 74. 14 N.W. 912 (1883)." *State of Wisconsin v. William F. Schweda, Jeffrey G. Schweda, and E.C.I.*

Plaintiff's right to a trial by jury is protected under Amendment VII of the United States Constitution which states "In Suits at common law. where the value in controversy shall exceed twenty dollars. the right of trial by jury shall be preserved. and no fact tried by a jury. shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law." Summary judgment cannot waive Plaintiff's constitutional right to a trial by jury. Furthermore. Article I. Section 7 of the Utah Constitution states that ". . . No person shall be deprived of life. liberty or property. without due process of law." Summary judgment cannot waive Plaintiff's constitutional right to a trial by jury. Otherwise it would in be violation of her due process right.

Plaintiff has requested in her opposition (Dkt No. 115 & 116 ("Opposition") to have a trial by jury supported by the supreme law of the land. Furthermore. the U.S. Constitution has stated that "This Constitution, and the Laws of the United States which shall be made Pursuance thereof: . . .shall be the supreme Law of the land; and the Judges in every State shall be bound

thereby." Plaintiff's right to a jury trial is a constitutional right, it is inviolate, and all judges are bound by this law. In addition, Amendment 14 of the U.S. Constitution states in part that ". . . nor shall any state deprive any person of life, liberty, or property, without due process of law. . .". This is the supreme law which is fully controlling and binding upon the court which is unfettered. Plaintiff has a constitutional right to have a trial by jury, this right cannot be waived by Defendant's summary judgment, to assume otherwise is absurd.

If summary judgment can waive the opposing party's demanded right to a jury trial, then the tail can wag the dog which is absurd. It is an absurd result that a summary judgment law can waive the law that protects the opposing party's right to a trial by jury. Under the absurd result doctrine the Utah State Supreme Court stated in the case of *State Ex Rel. Z.C.*, 2007 UT 54 that ". . . consequences, manifestly contradictory to common reason, they are, with regard to those collateral consequences, void. I lay down the rule with these restrictions; though I know it is generally laid down more largely, that acts of parliament contrary to reason are void. But if the parliament will positively enact a thing to be done which is unreasonable, I know of no power that can control it: and the examples usually alleged in support of this sense of the rule do none of them prove, that where the main object of a statute is unreasonable the judges are at liberty to reject it; for that were to set the judicial power above that of the legislature, which would be subversive of all government. But where some collateral matter arises out of the general words, and happens to be unreasonable; there the judges are in decency to conclude that this consequence was not foreseen by the parliament, and therefore they are at liberty to expound the statute by equity, and only quoad hoc disregard it." Here the Supreme Court cited William, 1 commentaries *91. It is an absurd result to calculate that a summary judgment law can waive the law that protects the opposing party's right to a trial by jury. Plaintiff herein objects to the

R&R's conclusion that the said case is not applicable to the issues before the court. The said case law is applicable as stated above.

Plaintiff's right to have a trial by jury is inviolate which cannot be abolished by summary judgment, to this end Plaintiff moves the court to deny Defendant's summary judgment motion and allow Plaintiff to exercise her constitutional right to enjoy a trial by jury.

Before a jury, Plaintiff would argue that Defendant Ocwen offered a HAMP Trial Plan to Plaintiff, accepts $24,254.44 from Plaintiff in support of this Plan, and that under the **plain language of the Plan** it states that the first three payments are **trial payments**, and that the fourth payment would be the **first modification payment** (not a trial payment) due on 09/01/2012. Also, under the plain language of the Plan it clearly states "Please note, you must continue making the modification payments during the recession process." Twice the wording of modification payments is used by the HAMP Plan upon which Plaintiff did make the modification payments. See Dkt No. 115 & 116 ("Opposition"). Plaintiff objects to the R&R for failing to recognize and addressing that there are two different types of payments made by Plaintiff, the first 3 are trial period payments and that the forth and succeeding payments are modification payments. In further support that Plaintiff made permanent loan modification payments is found by the affidavit of Paul M. Halliday, Jr. who stated "Affiant has been advised by Ocwen Loan Servicing, LLC that the Trustors were awarded a HAMP modification which modification was under review prior to the time the Trustee's Sale was held, rending the sale held on April 9, 2012 void". See Nationstar Exhibit G (Dkt. No. 107-7). Here again, Plaul M. Halliday, Jr. testifies that Plaintiff was awarded a loan modification.

The R&R states that Plaintiff rejected a remedy that she now seeks. Plaintiff objects to this conclusion and moves to have a trial by jury decide such facts. Plaintiff would argue before

a jury that after she had made her trial period payments. and upon her making the modification payments it was promised that she would receive final docs to sign that would arrive under separate cover. she was excited to finally be able to get back to normal. with a contract and payments. She looked forward to ending the years of uncertainty. However, she was again disappointed as the final documents never came.

Instead of receiving the promised final docs. Plaintiff began receiving calls from Nationstar. demanding nearly $78.000 to be paid immediately and claiming they were servicing the loan. and that they did not owe Plaintiff anything. She informed them that she had no notice from Owcen verifying their claim. and that she was making payments on her permanent loan modification and was waiting for the docs to sign in that regard. Nationstar rejected this claim of Plaintiff and "offered" to let Plaintiff apply for a HAMP workout. After having suffered so much the previous two years. Plaintiff just couldn't agree to starting it all over again. Especially when you consider Plaintiff still had no way of knowing how it would end and what additional costs it would bring. Plaintiff believed that this work out plan was an attempt to damage her further. Plaintiff was highly emotionally exhausted and felt betrayed. She had fulfilled her end of the deal. she provided all the paper work that was requested from her. she made all the required payments on time. and in return she was promised the docs to sign which she never got.

Nationstar's offer added 40 years to Plaintiff's mortgage with no guaranteed payment amount. and was still subject to their final approval. She could not trust the Defendants and needed help which brought on this lawsuit.

It appeared to Plaintiff that signing their offer would result in her mortgage exceeding the value of her home (so selling would never be an option) . encumbering her well beyond her

lifetime, and most importantly, removing any legal rights of recourse if it didn't become permanent. This offer was to damage Plaintiff further.

Additionally, Plaintiff has the right to have a jury decide if her causes of action are proper and justified based upon her allegation and supporting facts. This fact is self evident.

**THE RIGHT TO A TRIAL BY JURY IS SELF EVIDENT**

To understand how it's self evident that Plaintiff has a right to a trial by jury, we must first understand the basis of the United States Constitution and how it ties in with the Declaration of Independence.

The Amendments of the United States Constitution amend the Articles of the Constitution by authority of Article V of the Constitution, however the 9th Amendment is the supreme law upon which all Articles and Amendments are bound, it is the interpretation clause.

Amendment IX of the Constitution states "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." The Constitution cannot be construed by any means, by any law, by any power, by any court of law on earth to deny or disparage your rights. These rights that cannot be violated are identified in the second clause of the Declaration Of Independence, it states: "We hold these truths to be self evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness, — That to secure these rights, governments are instituted among Men, deriving their just powers from the consent of the governed. . ." Being that our founding fathers declared that our unalienable rights are given to us by our creator, therefore it is proper to declare that our rights are God-given.

Our God-given rights are not only self evident, but they are unalienable which means you cannot give them away and nobody can take them from you. People and courts today may have the means to violate your rights, but this does not mean they can take your rights away from you.

God is the only one who gives us our unalienable rights, not man. No Constitution or any kind of agency erected by man, including courts of law, can ever be construed as being the giver of our rights, but we can erect agencies to protect these rights "That to secure these rights, governments are instituted among Men, deriving their just powers from the consent of the governed. . ." *Id.* The Utah State Supreme court recognizes that this is true. In the case of *American Bush v. City Of South Salt Lake,* 2006 Ut 40 140 P.3d.1235 the Supreme Court stated that "In considering State constitutions we must not commit the mistake of supposing that, because individual rights are guarded and protected by them, they must also be considered as owing their origin to them. These instruments measure the powers of the rulers, but they do not measure the rights of the governed. . . . [A state constitution] is not the beginning of a community, nor the origin of private rights; it is not the fountain of law, nor the incipient state of government; it is not the cause, but consequence, of personal and political freedom; **it grants no rights to the people**, but is the creature of their power, the instrument of their convenience. Designed for their protection in the enjoyment of the **rights and powers which they possessed before the constitution was made,** it is but the framework of the political government . . . It presupposes an organized society, law, order, property, personal freedom, a love of political liberty, and enough of cultivated intelligence to know how to guard it against the encroachments of tyranny." (Bold emphasis added)

Courts of law are governed by and subject to the consent of the people pursuant to Amendment IX, and judges are bound by Article VI of the Constitution which states "This

Constitution, and the Laws of the United States which shall be made Pursuance thereof; . . .shall be the supreme Law of the land; and the Judges in every State shall be bound thereby." And Article III states "The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behavior". This is known as the 'Good Behavior Clause'.

What is to be understood here is that the Constitution recognizes that it is not the giver of your rights nor can it be because it is self evident that God is the only giver of our rights, not man. Therefore no man has any right to set up any kind of agency (like a court) that would act as the giver of your rights. This means that because Judges are bound by the Constitution they cannot ever at any time esteem themselves as being the giver of your rights. If a Judge acts as the giver of your rights that judge may be accused of being a God—acting as though he is the giver or rights and not God, thus violating and trampling on your rights. This would no longer be in compliant with the 'Good Behavior Clause'.

Again, Amendment IX of the Constitution states "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

A Judge is never in any position to disparage or deny ones God-given rights, if the Judge does do this, this would make him the giver of your rights and not God. Again, a judge should never control, affect or guide the outcome of the case that violates one's God-given rights, if the judge does this, this puts the judge in the position of being the giver of our rights and only God has that right. A Judge is not the giver of your rights because he's been set there by the people whom can only give rights to the court that they themselves have, therefore the Judge is to protect your rights, which is accomplished by never violating ones God-given rights. But what are these rights? Pursuant to the doctrine of the Object Principle of Justice ("OPJ") in a court

setting. these rights are what the parties in court declare them to be or not be. and so in this case Plaintiff hereby declares that she has a God-given right to have a trial by jury.

The exercise of any God-given right cannot ever be met by any kind of reprisals from Government. for it is not Government that gives you your rights. As stated above it is the purpose of Government to protect your God-given rights.

Currently there exists wrongful legal authority promoting the concept that judges have a duty to interpret the law or your rights. this mostly stems from Canon 2.2 of the Code Of Judicial Conduct what states "A judge shall uphold and apply the law.* and shall perform all duties of judicial office fairly and impartially." " [1]. . .a judge must interpret and apply the law without regard to whether the judge approves or disapproves of the law in question. [2] When applying and interpreting the law. a judge may make good-faith errors of fact or law. Errors of this kind do not violate this Rule". In addition to this legal authority. the courts role to interpret the law also stems from the Utah State Supreme Court as outlined in the case of *State v. Walker*. 267 P.3d 210. 217-218 (Utah 2011) which states:

> "For the most part. the role of modern judges is to interpret the law. not to repeal or amend it. and then to apply it to the facts of the cases that come before them. The process of interpretation. moreover. involves the judge in an exercise that implicates not the judge's own view of what the law should be. but instead a determination of what the law is as handed down by the legislature or framers of the constitution. The judge. in other words. is not a primary lawgiver but instead an agent for the legislature or framer that played that role. This allocation of power again is deliberate. The more politically accountable bodies of government make new laws; judges. who are more insulated from political processes. simply interpret them and attempt to apply them in a objective. evenhanded manner."

Based upon these legal authorities it is easy to believe that the courts job is to interpret the law or your God-given rights and apply it to the facts of the case. In the very instance that a judge does this. it becomes a law-giver in violation of the supreme law of the land. and it

attempts to nullify the supreme law of the land, along with its protective legal authorities and your God-given rights, by giving you or telling you what your rights are.

If the courts are forbidden to interpret the law or arguments before the court, it may be argued that if the courts were only permitted to choose between the interpretations provided by the parties in court, and if the parties in court failed to provide the proper interpretation of the rule, statute, case law or their God-given rights, then the court would be required to apply the only interpretation available to it that could possibly be wholly incorrect. In order for the court to know which interpretation was "incorrect" that court would have to know what the "correct" law or rights are, and if the parties are not able to advise the court on what the correct law or rights are, the court must do so itself being unaware of who else would provide that information to the court. It may be argued that this would create inconsistency in the interpretation and application of the law, and this would inherently create an injustice in our court system. So in order to prevent this the court's role is to interpret the law and rights and apply it to the facts of the case. This reasoning is wholly wrong and promotes the court into being the law giver or right giver in violation of the United Stated Constitution as described above.

The argument that the court needs to interpret the law or rights in order to prevent inconsistency in the interpretation and application of the law is wrong and incorrect, and it is not how God intended our courts to act.

Now in consideration of the argument that the court needs to interpret the law or rights in order to prevent inconsistency in the interpretation and application law, under the OPJ when the pleadings/arguments are both ambiguous making it difficult for the court to make a decision, the court then can make a decision of status quo **without prejudice** (allowing the case to remain the same as it was before it entered the court with a chance of the parties to re-invoke their

arguments). This would promote the parties to produce a better interpretation of the law for the court to understand and rule on.

Let's say the court rendered an erroneous decision based upon erroneous pleadings, this does not create an inconsistency in the law or rights nor the interpretation of law and rights. because anytime that this erroneous case law is used it can be argued that it is an erroneous case law due to the fact that the arguments were erroneous. therefore it would not promote inconsistency of law. Even today case law is overturned because it was found to be inconsistent or unjust.

When parties in court invoke legal authorities it is up to them to demonstrate to the court how that law does or does not protect your rights. It is the parties in court who must declare unto the court what their rights are and how the other party violated their rights. and what changes or remedies are needed. The parties in court battle this out. either in opposition or in support thereof. How do we know that this is how our courts are to operate? This reasoning stems from the natural right of the people to use the court in the protection of their rights to whatever they may be. When the people have arguments or infractions that can't be resolved. they have always had the natural right to find a place that will bound them to a resolution of the arguments. thus courts are born. this is self evident. The people created the courts and agreed to be bound by the decisions of the court which is necessary in order to reach some resolve. But in order to keep the court neutral and unbiased. it cannot become a right-giver. or law-giver. which means the court cannot become involved in the arguments of the parties by invoking their interpretations of the law or rights. Again, the moment the court is enabled with the power to interpret the law or rights it becomes the law giver and it also makes our courts precarious. Under the OPJ you would have a much better sense of whom is going to win before going to court. and it would

make our court more certain then so precarious. furthermore. it alleviates the burden of the court to interpret the law or rights and to invoke its finding to the demise of the losing party. You fight for your rights against the opposing party. not against the court. for the court is the protector of your rights not the giver of them. this is a reason why the court must stay out of the arguments and not interject its interpretation of the law.

A party in court will state how it wants the court to protect its rights. It is the job of the judge to listen to the opposing side in deciding whether or not to grant such a request.

If controlling legal authorities invoked by a party in court are first subject to the court's judicial determination or interpretation of these legal authorities. then the only rights you have is what the court gives you which you cannot know beforehand. This makes our courts precarious and produces uncertainty in our courts. It makes a party subject to the court with the court being the ultimate holder of your rights instead of it being the protector of them. How can this be just? Furthermore why would the court want to burden itself with overcoming the legal theory of any party in court? As stated above, the supreme law of the land dictates that the court must act only as a **referee** between the arguments. The power of the court to give out rights is a power that cannot be given to the courts by the people. nor can this power be exercised by the courts on their own.

Today the courts have the power under the doctrine of equity. or for other reasons. to strip away any legal authority that a party is using that would unjustly enrich them. This stripping power enjoyed by the courts is inherently wrong on two accounts: 1) this striping power puts the court back into the first position of determining or interpreting legal authorities which makes the courts the giver of your rights and not the protector of them thus making our courts precarious, and 2) this striping power puts the party that it favors safely behind the

court—this party is protected by the court which the opposing party cannot penetrate: there is no justice served in allowing a party to hide behind the court. When a party is hiding behind the court it prejudices the opposing party and forces the opposing party to argue with the court. A court that forces the opposing party to argue with the court becomes unjust because the court and the opposing party are not on the same ground unless the court agrees to share in the liability of the case and becomes equal to the party that it protects which it cannot do and still be an unbiased judge. Alh though it appears as a good thing that the doctrine of equity protects one from being enriched by the law, this doctrine also allows one to hide behind the court in a challenge of the doctrine of equity which is why this doctrine should not be used by the courts.

Under The Object Principle of Justice the doctrine of equity still becomes the responsibility of a party in court to demonstrate to the court how the law is unjustly enriching the other party. The court cannot invoke any doctrine or any kind of its own judicial determination against any party that is being unjustly enriched by the law for it is up to a party in court to do that. Again, under the doctrine of The Object Principle of Justice the court cannot ever help one party to the demise of the defending party without prejudicing the losing party.

Under the OPJ the court can follow the arguments that seek to change the law and can rule in favor of an argument that seeks to change the law. This is done without the court interjecting its own arguments.

Canon 2.2 of the Code Of Judicial Conduct as quoted above violates the supreme law of the land including the doctrine of The Object Principle of Justice. The moment the judge makes any kind of interpretation of the law that helps one party to the demise of the other party it prejudiced the party it demised. It has put the party it demised in a situation that the losing party must now argue with the court which is not just. Defending yourself against the court instead of

the opposing party cannot be done on equal grounds with the court because the court holds the power for the final outcome of the argument. Again, the court should not want to place itself as a contender in any court action by invoking its own findings or arguments that is not found within the pleadings or arguments before the court. When the court invokes its own legal theory or judicial determination it favors one party over the other forcing the losing party to argue with the court if it wants to win. Where is the justice in that? Again, a direct argument with the court is not fair nor can it be because the court holds the final decision as to the outcome of the argument.

Under the doctrine of The Object Principle of Justice the court cannot interpret the law. It it must look to the pleadings/arguments in court in determining which interpretation of the law is correct.

Under Canon 2.3 it details what type of prejudice and bias a judge is to avoid, but it does not include or describe how a party becomes prejudiced when the court helps one party to the demise of another party as outlined in the doctrine of The Object Principle of Justice.

Furthermore, legal authorities such as Cannon 2.3 and the doctrine of equity that allow Judges with sua sponte powers of any kind are subject to the Constitution and can never be used as a tool in the giving of rights. Judges have every right to quoad hoc disregard such unconstitutional powers. Again, the case of *State Ex Rel. Z.C.*, 2007 UT 54 supports judges who quoad hoc disregard such powers, it states ". . . consequences, manifestly contradictory to common reason, they are, with regard to those collateral consequences, void. I lay down the rule with these restrictions; though I know it is generally laid down more largely, that acts of parliament contrary to reason are void. But if the parliament will positively enact a thing to be done which is unreasonable, I know of no power that can control it: and the examples usually

alleged in support of this sense of the rule do none of them prove. that where the main object of a statute is unreasonable the judges are at liberty to reject it: for that were to set the judicial power above that of the legislature. which would be subversive of all government. But where some collateral matter arises out of the general words. and happens to be unreasonable: there the judges are in decency to conclude that this consequence was not foreseen by the parliament. and therefore they are at liberty to expound the statute by equity. and only quoad hoc disregard it."

Matters of jurisdiction. procedural requirements and rules that keep the court in proper operations are still powers maintained by the courts for the courts to use outside of any arguments by the parties. These powers are not affected by The Object Principle of Justice.

> "If you want to gauge the prosperity of society look to its courts. if you see injustice being promoted as justice you will see its society wavering to and fro as a drunken man whose demise becomes the ground he falls upon." —*Author unknown*

In the case of Otratai Culhane v. Aurora Loan Services of Nebraska. case # 1:11-cv-11098-WGY. Judge William G Young. a district judge. wrote a memorandum and order dated on November 28. 2011 where upon he stated:

> ". . . a "sea-change" was taking place among federal trial judges. Many no longer perceived their primary tasks as deciding motions after oral argument and presiding as neutral referees at trials. They were encouraged to consider themselves managers whose job was to dispose of cases expeditiously. From that perspective trials came to seem wasteful."

Again. it is self evident that when a trial court acts like a manager of a case it has thrown out the doctrine of The Object Principle of Justice. This doctrine is the bedrock that a court follows in order to maintain the highest level of justice.

When injustice reigns in our courts a citizen has the cruel alternative of either losing his moral sense of justice or losing his respect for our court system. Again, court injustice turns a sense of that which is certain into that which is uncertain and precarious. Courts of injustice

burden the courts with increased cases, appeals and other types of challenges, and they fuel the cruel alternative of people losing their moral sense of justice or losing their respect for our court systems, this also promotes the breakdown of society. A court of injustice becomes the father of corruption.

It would seem logical that if the courts followed strictly the doctrine of The Object Principle of Justice that even a party losing in court would know that justice was served. Our courts would be the easiest to understand, the most just, limited, highly effective, respected and dearly admired court system in the world.

As sated above, being that our court system was created by the power of our God-given rights, and being that the design of our courts is never to violate our God-given rights, and being that Plaintiff has declared that she has a God-given right to have a trial by jury in order to decide the law and facts of this case. For these reasons and those stated above Plaintiff moves this court to dismiss Defendant's summary judgment motion and to follow the OPJ.

WHEREFOR, for the above reasons Plaintiff moves this court to deny Defendant's summary judgment motion and to protect Plaintiff's self evident and constitutional right to have a trial by jury.

Dated this the 13th day of December, 2016.

Sharon Magnusson, pro se

**CERTIFICATE OF SERVICE**

I hereby certify that on the 13th day of December, 2016 I caused to be mailed, via US mail, postage prepaid, to the parties named below, a true an correct copy of **OBJECTION TO REPORT & RECOMMENDATION DATED 12/06/2016.**

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